

## Department of Homeland Security

## §210.4

(3) *Grounds of exclusion that may not be waived.* The following provisions of section 212(a) of the Act may not be waived:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except as provided in paragraph (c)(4) of this section.

(iii) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana.

(iv) Paragraphs (27), (prejudicial to the public interest), (28), (communists), and (29) (subversive);

(v) Paragraph (33) (Nazi persecution).

(4) *Special Rule for determination of public charge.* An applicant who has a consistent employment history which shows the ability to support himself and his or her family, even though his income may be below the poverty level, is not excludable under paragraph (e)(3)(ii) of this section. The applicant's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the applicant shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without reliance on public cash assistance. This regulation is prospective in that the Service shall determine, based on the applicant's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

[53 FR 10064, Mar. 29, 1988, as amended at 53 FR 27335, July 20, 1988; 54 FR 4757, Jan. 31, 1989; 55 FR 12629, Apr. 5, 1990]

### §210.4 Status and benefits.

(a) *Date of adjustment.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date on which the fee was paid at a legalization office, except that the status of an alien

who applied for such status at an overseas processing office whose application has been recommended for approval by that office shall be adjusted as of the date of his or her admission into the United States.

(b) *Employment and travel authorization—(1) General.* Authorization for employment and travel abroad for temporary resident status applicants under section 210 of the Act be granted by the INS. In the case of an application which has been filed with a qualified designated entity, employment authorization may only be granted after a nonfrivolous application has been received at a legalization office, and receipt of the fee has been recorded.

(2) *Employment and travel authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant after an interview has been conducted in connection with a nonfrivolous application at a Service office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments not exceeding 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the Employment Authorization Document (Form I-766, Form I-688A or Form I-688B) that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office. Persons submitting applications who currently have work authorization incident to status as defined in §274a.12(b) of this chapter shall be granted work authorization by the Service effective on the date the alien's prior work authorization expires. Permission to travel abroad shall be granted in accordance with the Service's advance parole provisions contained in §212.5(f) of this chapter.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office, and upon surrender of the previously issued Employment Authorization Document, will be issued Form I-688, Temporary Resident Card. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted to permanent residence.

(c) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act is not entitled to submit a petition pursuant to section 203(a)(2) of the Act or to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence, except as provided in paragraph (b)(3) of this section.

(d) *Termination of temporary resident status—(1) General.* The temporary resident status of a special agricultural worker is terminated automatically and without notice under section 210(a)(3) of the Act upon entry of a final order of deportation by an immigration judge based on a determination that the alien is deportable under section 241 of the Act.

(2) The status of an alien lawfully admitted for temporary residence under section 210(a)(2) of the Act, may be terminated before the alien becomes eligible for adjustment of status under §210.5 of this part, upon the occurrence of any of the following:

(i) It is determined by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as provided in section 212(a)(19) of the Act;

(ii) The alien commits an act which renders him or her inadmissible as an

immigrant, unless a waiver is secured pursuant to §210.3(e)(2) of this part;

(iii) The alien is convicted of any felony, or three or more misdemeanors in the United States.

(3) *Procedure.* (i) Termination of an alien's status under paragraph (d)(2) of this section will be made only on notice to the alien sent by certified mail directed to his or her last known address, and to his or her representative. The alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within thirty (30) days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the regional processing facility shall notify the alien of the decision and the reasons for the termination, and further notify the alien that any Service Form I-94, Arrival-Departure Record or other official Service document issued to the alien authorizing employment and/or travel abroad, or any Form I-688, Temporary Resident Card previously issued to the alien will be declared void by the director of the regional processing facility within thirty (30) days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) using Form I-694. Any appeal with the required fee shall be filed with the regional processing facility within thirty (30) days after the service of the notice of termination. If no appeal is filed within that period, the Forms I-94, I-688 or other official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(ii) Termination proceedings must be commenced before the alien becomes eligible for adjustment of status under §210.5 of this part. The timely commencement of termination proceedings will preclude the alien from becoming a lawful permanent resident until a final determination is made in the proceedings, including any appeal.

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